IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal Action No. H-09-342
	§	
ROBERT ALLEN STANFORD,	§	
a/k/a Sir Allen Stanford	§	
a/k/a Allen Stanford	§	

ORDER

Pending before the Court is United States of America's Motion for Revocation of Release Order. Having considered the motion, evidence, testimony and oral argument presented during a hearing held on June 29, 2009, and the applicable law, the Court determines the motion should be granted. Accordingly, the Court now enters the following findings of fact and conclusions of law. Any finding of fact that should be construed as a conclusion of law is hereby adopted as such. Any conclusion of law that should be construed as a finding of fact is hereby adopted as such.

INTRODUCTION

On June 18, 2009, a federal grand jury in Houston, Texas returned a twenty-one count indictment against Defendant Robert Allen Stanford ("Stanford"), Chairman of the Board of Directors of Stanford International Bank, Ltd. ("SIBL"), and four co-defendants. The indictment alleges that Stanford, in controlling Stanford Financial

Group ("SFG") and its affiliated companies—including SIBL, conspired to commit and did commit mail fraud and wire fraud, conspired to commit securities fraud and money laundering, and conspired to obstruct and did obstruct a Securities Exchange Commission ("SEC") investigation.

On June 25, 2009, United States Magistrate Judge Frances Stacy held a detention hearing at which witnesses testified and evidence was received. Judge Stacy specifically found "that there is a risk of flight for Mr. Stanford" but then granted bond of $500,000 with a $100,000 cash deposit.[1] The United States of America ("Government") moved to stay Magistrate Judge Stacy's release order, and this Court granted the motion. The Government then moved this Court to revoke Magistrate Stacy's release order and order Stanford detained pending trial.

On June 29, 2009, the Court held a hearing on the Government's motion to revoke the release order. At the hearing, the Court received evidence, including the complete transcript of the magistrate judge's detention hearing, and heard argument from counsel.

FINDINGS OF FACT

1. Stanford is a citizen of both the United States of American and the country of

[1] *See* Transcript of Detention Hearing at 207, *United States v. Robert Allen Stanford*, Crim. No. 4:09-cr-342 (Document No. 46).

Antigua and Barbuda.[2]

2. In September 2008, *Forbes* magazine listed Stanford as the 205th wealthiest American with a net worth of over $2 billion.

3. Stanford has lived primarily outside of the United States for at least the last fifteen (15) years prior to the February 2009 filing of SEC civil proceedings against him, *Securities & Exchange Commission v. Stanford International Bank, Ltd.*, No. 3:09-cv-298-N (N.D. Tex.), (the "SEC Action").

4. Forensic accountants working for the receiver ("Receiver") appointed in the SEC Action have been unable to account for approximately $1.1 billion in funds investors deposited, in the form of Certificates of Deposit, into SIBL.

5. An SFG bank account ("the Swiss bank account") existed at Societe Generale Bank in Switzerland, in which only Stanford and Chief Financial Officer Jim Davis ("Davis") maintained signatory authority. This account was allegedly unknown to Chief Investment Officer Laura Pendergest-Holt, who generally maintained signatory authority on other accounts that SFG and related entities held at Societe Generale. At a meeting with Stanford and Davis, Pendergest-Holt allegedly was directed to leave the room when Stanford and Davis began discussing the Swiss bank account.

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[2] Stanford is also referred to as Sir Allen Stanford because he was knighted by the country of Antigua and Barbuda.

6. The balance in the bank account decreased from approximately $120 million to approximately $20 million during the last two weeks of December 2008, about the time the SEC and other regulatory agencies began taking enforcement actions against SIBL.

7. In mid-2008, Stanford and Davis used the Swiss bank account to make monthly payments to their outside private auditor in amounts greater than the normal payments to those auditors, which were usually made from an established SIBL account. Stanford and Davis communicated the request for payment to Blaise Friedli, Executive Vice President of Private Banking at Societe Generale, who served on SFG's International Advisory Board.

8. In late 2008, the SEC issued a subpoena for Stanford to testify before the commission regarding the SEC investigation into SFG. On January 26, 2009, Stanford traveled from St. Croix, U.S. Virgin Islands to Tripoli, Libya and then on to Zurich, Switzerland, where he stayed until January 29, 2009. Stanford's pilot testified this was an unusually lengthy stay compared to Stanford's previous trips to Switzerland.

9. Moreover, Stanford engaged in routine, almost continual, international travel on the fleet of six private jets and one helicopter belonging to SFG and its related companies. Testimony indicates these flights were often scheduled at

the last minute and steps were taken to conceal Stanford's whereabouts.

10. Further, Stanford's United States passport reveals his travel to more than thirty countries on five continents since 2005.

11. Between January 2004 and February 18, 2009, Stanford engaged in almost non-stop travel across the globe. *See* Government's Exhibit 14A.[3]

12. Stanford's U.S. passport shows multiple occasions in which there is an exit stamp for Antigua but no corresponding entry stamp, or an entry stamp with no corresponding exit stamp. *See* Government's Exhibit 14.

13. Stanford failed to disclose to Pretrial Services that he also possessed an Antiguan passport.

14. At the June 25, 2009 hearing before the magistrate judge, Stanford stated he did not know where his Antiguan passport currently was located. At the June 29 hearing, it was made clear to the Court that Stanford indeed possessed two Antiguan passports, one of which was expired. Also, at the June 29 hearing, Stanford surrendered one Antiguan passport to the Court, indicating that a

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[3] Government's Exhibit 14A is a spreadsheet containing Stanford's travel records between December 31, 2003 and February 18, 2009. It is forty-two (42) pages long, contains 2,127 separate line entries, and lists entry and exit into over thirty-one (31) countries, including, *inter alia*, Libya, Panama, Singapore, Malaysia, Colombia, Mexico, and Venezuela. Moreover, these entries demonstrate Stanford hop-scotched the globe over this five-year period, remaining in one city or country for only extremely limited duration.

friend of Stanford had retrieved the passport from Stanford's hangar apartment in Antigua in May.[4]

15. The whereabouts of the second, allegedly expired, Antiguan passport is unknown.

16. It is clear that Stanford has numerous international business contacts.

17. Moreover, Stanford's acquaintances have shown a willingness to provide him with financial support. For example, an individual Stanford had not met until April 2009 paid $36,000 for one year's rent for an apartment in Houston for Stanford to live in pending his trial.

18. Furthermore, the indictment alleges Stanford bribed Leroy King, Commission of the Antiguan Financial Services Regulatory Commission, to prevent detection of the alleged fraud.

19. The indictment charges counts with a total sentencing exposure of 375 years confinement. If convicted on all charges, the fraud amount alleged in the indictment would result in an advisory Sentencing Guideline range of life in prison.

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[4] Moreover, it is unclear from the testimony or counsel argument whether Stanford also possesses a diplomatic passport issued by Antigua. The Court notes these inconsistencies in Stanford's statements regarding the Antiguan passports.

CONCLUSIONS OF LAW

A. Standard of Review

20. The district court reviews a magistrate court's release order *de novo*. *See, e.g., United States v. Rueben*, 974 F.2d 580, 585–86 (5th Cir. 1992), *cert. denied*, 507 U.S. 940 (1993); *United States v. Gourley*, 936 F. Supp. 412, 415 (S.D. Tex. 1996).

21. Moreover, the district court "must make an independent determination of the proper pretrial detention or conditions of release." *Rueben*, 974 F.2d at 585–86.

22. It is well within the district court's discretion to determine the propriety of pretrial release. *See, e.g., United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989) ("Absent an error of law, we must uphold a district court's pretrial detention order 'if it is supported by the proceedings below'" (citing *United States v. Jackson*, 845 F.2d 1262, 1263 (5th Cir. 1988)).

23. In determining whether there are conditions of release that will reasonably assure the defendant appears at trial, the court considers: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; and (3) the defendant's personal history and characteristics, including, *inter alia*, his length of residence in the community. 18 U.S.C. § 1342(g); *Rueben*, 974 F.2d at 586.

24. "For pretrial detention to be imposed on a defendant, the lack of reasonable assurance of either the defendant's appearance, or the safety of others or the community, is sufficient; both are not required." *Rueben*, 974 F.2d at 586.

B. Flight Risk

25. The Government contends Stanford is a serious flight risk.

26. The determination of whether a defendant poses a serious flight risk is made based on the preponderance of the evidence. *See, e.g., Fortna*, 769 F.2d 243, 250 ("[T]o order detention [based on flight risk] the judicial officer should determine, from the information before him, that it is more likely than not that no condition or combination of conditions will reasonably assure the accused's appearance.").

27. Furthermore, "[d]etention determinations must be made individually and, in the final analysis, must be based on the evidence which is before the court regarding the particular defendant." *United States v. Tortora*, 922 F.2d 880, 888 (1st Cir. 1990); *United States v. Knight*, 636 F. Supp. 1462, 1467 (S.D. Fla. 1986) ("Each case must be considered on its own merit.").[5]

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[5] Stanford points to several other high-profile white-collar criminal cases in which defendants were granted pretrial release on various amounts of bond. The Court first notes that "[n]o two defendants are likely to have the same pedigree or to occupy the same position," and the Court's determination is a case-by-case, factual determination. *See Tortora*, 922 F.2d at 888; *Rueben*, 974 F.2d at 585–86. Moreover, each of the defendants in the cases Stanford cites were U. S. citizens and residents of the United

C. Nature and Circumstances of the Offenses Charged

28. Stanford is charged with twenty-one counts. If convicted on all twenty-one counts, he faces a daunting term of imprisonment of, up to, 375 months.

29. The severity of the potential sentence weighs heavily in favor of detention. *See United States v. Almasri*, Crim. A. No. H-07-155, 2007 WL 2964780, at *1 (S.D. Tex. Oct. 10, 2001) (finding severity of potential ten-year sentences weighed in favor of detention).

D. Weight of the Evidence

30. Secondly, the Court considers the weight of the evidence against the defendant. *See* 18 U.S.C. § 1342(g); *Rueben*, 974 F.2d at 586; *Almasri*, 2007 WL 2964780, at *1.

31. However, courts have found this factor to be of least importance in the detention determination. *See, e.g., United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986); *United States v. Barnett*, 986 F. Supp. 385, 393 (W.D. La. 1997).

32. The charges against Stanford are multiple and complex, and the Government argues the evidence is overwhelming. Stanford denies guilt and contends there is no evidence to support the charges against him.

States, whereas Stanford, although a U. S. citizen, is also a citizen of Antigua and Barbuda and resided in that island nation for at least the past fifteen years.

33. However, the Government presented evidence that Stanford directed payments to be made from a bank account known only to himself and Davis, that $100 million was withdrawn from the bank account in late 2008 corresponding with the time frame the SEC began its inquiry into SFG, and that over $1 billion in SFG funds are still yet to be accounted for by the Receiver.

34. Moreover, Stanford concedes that SFG and its related entities conducted business around the globe in multiple countries, many of which have yet to be accessed by the Receiver.

35. In total, the evidence proffered by the Government is sufficient to weigh in favor of detention. *Cf. United States v. Minns*, 863 F. Supp. 360, 363–64 (N.D. Tex. 1994).

E. Personal History & Characteristics—Length of Residence in Community

36. A court will consider a defendant's ties to the community in determining whether the defendant proposes a serious flight risk. *See* 18 U.S.C. § 1342(g); *Rueben*, 974 F.2d at 586; *United States v. Trosper*, 809 F.2d 1107, 1110 (5th Cir. 1987).

37. The ties to the locality, including family ties, must be the "sort of family ties from which we can infer that a defendant is so deeply committed and personally attached that he cannot be driven from it by the threat of a long

prison sentence." *Rueben*, 974 F.2d at 586.

38. Moreover, the family ties must be the type of relationships that exert a level of control that would prevent the defendant from fleeing. *See Trosper*, 809 F.2d at 1110.

39. Here, the Government contends that Stanford has no longstanding family ties in Houston and that any residential ties to the area are illusory and made in order to secure pretrial release on bond.

40. Indeed, Stanford admits that, "Prior to his arrest, in 2009 Allen Stanford established a new residence in Houston *in preparation for his required presence during the pendency of this case*." Allen Stanford's Second Memorandum in Support of His Right to Pretrial Release, at 11–12 (emphasis added).

41. Stanford's family ties to Houston are tenuous at best and of recent vintage. It was only when it became clear that an indictment would be returned against him that he began making living arrangements in Houston. Although he claims his children are moving to Houston, that too is only due to Stanford's impending trial in Houston.

42. Furthermore, Stanford was in Virginia when the indictment was returned and was taken into custody in Virginia. Moreover, Stanford's longterm residence

is Antigua and his frequent travels across the globe and to multiple foreign countries belie his contention that he has strong ties to Houston.

43. This factor weighs heavily in favor of detention. *See Rueben*, 974 F.2d at 586; *Trosper*, 809 F.2d at 1110; *see also U.S. v. Cisneros*, 328 F.3d 610, 618 (10th Cir. 2003); *Almasri*, 2007 WL 2964780, at *2.

44. Taken together, Stanford's longstanding ties to a country other than the United States—Antigua and Barbuda, his primary residence for the past fifteen years, his access to an international network and financial resources, his familiarity with global travel, and the severity of the punishment he may be subjected to if convicted of the charges alleged in the indictment against him compel the Court's determination that Stanford poses a significant risk to flee the Court's jurisdiction prior to trial. *See Cisneros*, 328 F.3d at 618; *Minns*, 863 F. Supp. at 364; *Almasri*, 2007 WL 2964780, at *2.

CONCLUSION

45. For all the foregoing reasons, the Court determines that Stanford is a serious flight risk and there is no condition or combination of conditions of pretrial release that will reasonably assure his appearance as required for trial. Accordingly, the Court hereby

ORDERS that United States of America's Motion for Revocation of Release

ORDER is GRANTED. The Court further

ORDERS that United States Magistrate Judge Frances Stacy's release order issued on June 25, 2009 is hereby REVERSED. The Court further

ORDERS that Defendant Robert Allen Stanford is hereby COMMITTED TO THE CUSTODY of the ATTORNEY GENERAL or his designated representative to be DETAINED pending trial. The Court further

ORDERS that because the Defendant is detained pretrial, the Defendant shall be held in a corrections facility separate, to the extent practicable, from persons serving sentences or being held in custody pending appeal. The Defendant shall be afforded a reasonable opportunity to consult in private with his attorneys.

SIGNED at Houston, Texas, on this 30 day of June, 2009.

DAVID HITTNER
United States District Judge

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UNITED STATES OF AMERICA	§	
	§	
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	§	
ROBERT ALLEN STANFORD,	§	
	§	
Defendant.	§	

ORDER FOR PSYCHIATRIC EVALUATION

Pending before the Court is a Memorandum of Law in Support of Motion for Relief and Medical Treatment (Document No. 397). Having considered the motion, testimony and oral argument presented during a hearing held on January 6, 2011, and the applicable law, the Court determines the motion should be granted in part and denied in part.

BACKGROUND

On June 18, 2009, a federal grand jury for the Southern District of Texas returned a twenty-one count indictment charging Defendant Robert Allen Stanford ("Stanford") and others with, *inter alia*, conspiring to commit securities fraud and money laundering, and conspiring to obstruct and obstructing an investigation of the Securities and Exchange Commission.

On June 30, 2009, the Court granted the Government's motion for revocation of release and committed Stanford to pretrial detention. After carefully considering

the evidence presented during a hearing, reviewing the full transcript of the magistrate judge's detention hearing, hearing argument from counsel, and applying the factors enumerated in the Bond Reform Act of 1984, 18 U.S.C. § 3141, *et seq.*, the Court concluded that Stanford is a serious flight risk and no condition or combinations of conditions would reasonably assure his appearance at trial.[1]

In September 2009, Stanford sustained a head injury during a confrontation with another inmate at the Joe Corley Detention Facility in Conroe, Texas. He underwent surgery to repair facial fractures. Thereafter, Stanford was relocated to the Federal Detention Center ("FDC") in Houston, Texas.

After the incident, and upon request of defense counsel, Victor Scarano, M.D., a forensic psychiatrist, evaluated Stanford. Dr. Scarano met with Stanford on October 19, 2009 and again on October 30, 2009. Dr. Scarano then reevaluated Stanford in April of 2010 and on November 27, 2010.

On December 9, 2010, counsel for Stanford moved the Court to hold an evidentiary hearing on Stanford's competency after Dr. Scarano opined that Stanford is not competent to stand trial.[2] The Government then moved to appoint Steven

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[1]The United States Court of Appeals for the Fifth Circuit has three times upheld the Court's ruling and, in the most recent appeal, the United States Supreme Court denied a writ of certiorari. *See infra.*

[2]Dr. Scarano testified that, although he had examined Stanford before, this was the first time counsel for Stanford specifically requested he complete an exam to determine

Rosenblatt, M.D., a forensic and clinical psychiatrist, to evaluate Stanford's mental capacity and provide a second opinion of his mental state. The Court granted the Government's motion. In addition, defense counsel requested David Axelrad, M.D., a forensic psychiatrist and neuro-psychiatrist, to interview Stanford and offer a third opinion. Dr. Scarano prepared a report of his findings and filed it under seal with the Court. Dr. Rosenblatt submitted a letter to the Government, reporting his findings, which was also filed under seal with the Court. After the hearing, Drs. Scarano and Axelrad submitted letters to Stanford's defense counsel, summarizing their recommendations, which were also filed with this Court.

On January 6, 2011, the Court held a hearing pursuant to Stanford's motion to determine competency under the Insanity Defense Reform Act of 1984, 18 U.S.C. § 4241, *et seq*. All three psychiatrists testified at the hearing. Dr. Scarano concluded that, based on the psychological testing he performed during his evaluations on Stanford,[3] Stanford's mental state renders him unable to effectively and rationally assist his attorneys in developing a defense for the charges against him. Dr. Scarano

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whether Stanford is competent to stand trial and offer an opinion accordingly.

[3]Dr. Scarano conducted a battery of psychological tests on Stanford. He concluded that all but one of those tests indicate Stanford's cognitive abilities are superior, above-average, or average. The only test Dr. Scarano reported indicates Stanford has below-average cognitive ability was his performance on the Trails A test. Dr. Scarano found this concerning because Stanford had tested well (within the normal range) on this test in October 2009 but tested poorly (outside the normal range) when he completed it in November 2010. Dr. Scarano believed this was an indication that Stanford was "deteriorating."

testified that this is a result of over-medication, which has led to an addiction,[4] or the injury Stanford sustained in September 2009. Dr. Rosenblatt, the Government's expert, also testified that Stanford is not competent to stand trial. He testified that Stanford is suffering from delirium, an organic brain syndrome, which prevents him from adequately assisting his attorneys to prepare his defense. He was uncertain whether the medications Stanford is currently taking are the root of that mental condition, or whether the condition stems from the head injury Stanford sustained in September 2009. Dr. Axelrad's testimony corroborated Dr. Rosenblatt's testimony that Stanford has some form of delirium caused by either Stanford's addiction to the medications he is currently taking or perhaps soft tissue damage, a result of the September 2009 head injury.

Although the three psychiatrists could not identify the exact cause of Stanford's diminished mental capacity, they opined it could be one or a combination of the following: (1) over-medication, which has led to an addiction; (2) brain damage caused by the head injury he sustained in September 2009; and/or (3) Major Depressive Disorder. All three agreed Stanford should be withdrawn from his medications. Dr. Scarano testified this process could take between three months and

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[4]The testimony revealed that Stanford is currently taking at least three medications to treat his anxiety and depression—clonazepam (Klonopin), mirtazapine (Remeron), and sertraline (Zoloft). The psychiatrists testified that especially the clonazepam dosage prescribed for Stanford was high in comparison to what they typically observe prescribed.

six months. Dr. Rosenblatt testified it could take between two weeks and two months. Dr. Axelrad testified the withdrawal could take between four weeks and three months. All of the psychiatrists explained withdrawal symptoms could cause adverse side effects if performed improperly. Accordingly, the psychiatrists recommended Stanford be placed in an in-patient psychiatric facility with full-time medical supervision while he is being withdrawn from the medication. They agreed that once Stanford's medication is reduced or discontinued, the cause of Stanford's impaired mental capacity will be more easily discernable. Dr. Rosenblatt and Dr. Axelrad also testified, and Dr. Scarano agreed in a letter to defense counsel filed with this Court, that Stanford would benefit from undergoing neuropsychological examinations to determine the residual effects, if any, of the injury he sustained in September 2009.

In addition to the psychiatrists' testimony, the Government called Daniel Fox, Ph.D., a psychologist at the FDC, as well as Captain Scott Fauver, the chief security officer at the FDC, to testify. Both testified to their observations of and interactions with Stanford at the FDC. Dr. Fox testified he has had several interactions with Stanford, though most were brief. He testified Stanford, for the most part, seemed to be aware of his surroundings and was able to engage in short conversations. Captain Fauver testified that e-mails and telephone conversations between Stanford and his

family and friends during his pretrial detention at the FDC demonstrate Stanford is able to think clearly and communicate rationally about a variety of issues, including issues regarding his case.

Following the competency hearing, the Government and Stanford's defense counsel submitted motions based on the testimony and evidence presented. The Government contends that Stanford is not legally incompetent, but moves the Court to nevertheless commit Stanford to a "suitable facility," as defined by U.S.C. § 4247(a)(2), for a psychiatric evaluation pursuant to U.S.C. § 4247(b). Stanford's defense counsel, on the other hand, contend that Stanford is legally incompetent to proceed to trial at this time and moves the Court to make a specific judicial determination to that extent. Further, they argue that Stanford should be released on bond so that he can commit himself into a private medical facility and remain on bond until the trial commences.

STANDARD OF REVIEW

The Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial. *Cooper v. Okla.*, 517 U.S. 348, 354 (1996); *Godinez v. Moran*, 509 U.S. 389, 394 (1993). In relevant part, the Fourteenth Amendment provides, "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV. When

making a competency determination, the court looks not to the mental condition of the accused at the time of the alleged offense, but rather is concerned with "whether the defendant is able to confer intelligently with counsel and to competently participate in the trial of his case." *United States v. Collins*, 491 F.2d 1050, 1053 (5th Cir. 1974). The standard for determining competency is whether, by a preponderance of the evidence, the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam); *see also* 18 U.S.C. § 4241(d) (adopting the *Dusky* standard for a judicial finding of incompetency and requiring a defendant to be able to "understand the nature and consequences of the proceedings against him or to assist properly in his defense.").

The Insanity Defense Reform Act of 1984, 18 U.S.C. § 4241, *et seq.*, guides the court in situations where an accused is presumed to be or is deemed legally incompetent. Once a court makes a judicial finding that the defendant is legally incompetent, section 4241(d) instructs that the court "shall commit the defendant to the custody of the Attorney General." 18 U.S.C. § 4241(d).

LAW & ANALYSIS

A. *Competency to Stand Trial*

It is uncontested that Stanford understands the nature and consequences of the proceedings against him. Thus, the issue before the Court is whether Stanford is able to adequately assist his attorneys to prepare his defense. At the hearing, all three psychiatrists testified that, after independently examining Stanford and reviewing his relevant medical records, Stanford lacks the mental capacity to stand trial at this time based on his apparent limited ability to assist his attorneys in preparing his defense.

The Government correctly points out that the opinions of the psychiatrists are not binding on the Court's judicial determination of Stanford's competency. *See, e.g.*, *United States v. Gray*, 421 F.2d 316, 318 (5th Cir. 1970); *Feguer v. United States*, 302 F.2d 214, 236 (8th Cir. 1962). In support, the Government cites *Benefiel v. Davis*, 357 F.3d 655, 659–60 (7th Cir. 2004) and *United States v. Gigante*, 996 F. Supp. 194, 200–01 (E.D.N.Y. 1998).[5] In both cases, the trial court declined to adopt the opinions of mental health experts. *Benefiel*, 357 F.3d at 659–60; *Gigante*, 996 F.

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[5]In *Benefiel v. Davis*, the Court of Appeals for the Seventh Circuit held an Indiana state court trial judge "knew manipulation when he saw it" when determining a defendant, who had twice been found competent after two hearings, was competent to continue the penalty phase of his trial. *Benefiel*, 357 F.3d at 659–60. The court declined to "tak[e] from the judge the ability to assess the credibility and persuasiveness of the evidence." *Id.* at 660. In *United States v. Gigante*, the district court determined a 69-year-old was fully competent to assist his attorneys and was "deliberately feigning mental illness to avoid the punishment which he fears." *Gigante*, 996 F. Supp. at 201–02, 238.

Supp. at 200–01. It is well-settled that it is the duty of the court, not the psychologists or psychiatrists, to make a specific judicial determination of whether a defendant is competent to stand trial. 18 U.S.C. § 4241(d); *see also United States v. David*, 511 F.2d 355, 360, n.9 (D.C. Cir. 1975) (citing *Cooper v. United States*, 337 F.2d 538, 539 (D.C. Cir. 1964), *cert. denied*, 382 U.S. 1029 (1966)). Thus, the Court is not required to adopt the opinions of psychiatrists or psychologists, but may use expert testimony and reports in making its finding. 18 U.S.C. § 4241(d); *David*, 511 F.2d at 360.

The Government urges the Court to strongly consider Dr. Fox's and Captain Fauver's testimony and decline to find Stanford incompetent. The Government moves the Court to, instead, commit Stanford to as suitable facility for a psychiatric evaluation.[6] Dr. Fox and Captain Fauver testified that Stanford is able to engage in small talk, work on his defense, and correspond through e-mails and telephone calls with his family and friends. Dr. Fox and Captain Fauver testified that they did not observe anything unusual about Stanford's behavior with two exceptions: Dr. Fox's testimony regarding a conversation he had with Stanford, during which Stanford had delayed responses, and Captain Fauver's testimony regarding a handful of completely

[6]Title 18 U.S.C. § 4247(b) allows the Court to commit an accused found to be incompetent to a psychiatric medical facility for a psychiatric evaluation for a period of thirty days, with a possible extension of fifteen days.

incoherent e-mails Stanford wrote immediately prior to his psychiatric evaluations. But this testimony, while it raises a possibility that Stanford is malingering, is not from "'witness[es who have] had prolonged and intimate contact with the accused.'" *Gray*, 421 F.2d at 318 (quoting *Wright v. United States*, 250 F.2d 4, 10 (D.C. Cir. 1957) (internal citation omitted)). Dr. Fox and Captain Fauver have had some contact with Stanford. Dr. Fox testified he has held approximately three formal meetings with Stanford and has walked with him to and from the offices of the FDC medical doctors when necessary. Captain Fauver testified he spoke with Stanford upon his arrival at the FDC and currently monitors Stanford's e-mails and telephone calls. The Court is not convinced the total interactions of Dr. Fox and Captain Fauver with Stanford approach the required threshold of "prolonged and intimate contact." *See Gray*, 421 F.2d at 318.

Stanford's counsel, on the other hand, contend Stanford is legally incompetent to proceed to trial at this time. The Court agrees. In light of the testimony presented and the reports submitted by the three psychiatrists—*including the Government's own expert, Dr. Rosenblatt*—the Court has no viable alternative but to find that Stanford does not have the present mental capacity to effectively assist his attorneys in preparing his defense, comporting with the Due Process Clause of the Fourteenth Amendment. While the Court does not blindly adopt the opinions of the three

psychiatrists, the Court weighs heavily their testimony in making its judicial determination because of the evaluations they conducted, their credentials in their fields, and most significantly, their unanimity. Accordingly, the Court finds Stanford is incompetent to stand trial at this time based on his apparent impaired ability to rationally assist his attorneys in preparing his defense.

B. Commitment to the Custody of the Attorney General

The Insanity Defense Reform Act is clear that, once a court finds a defendant lacks the mental capacity to proceed to trial, the court must commit the defendant to the custody of the Attorney General. 18 U.S.C. § 4241(d) (stating that the court shall commit the defendant to the custody of the Attorney General upon consideration of sufficient evidence that the defendant is presently incompetent to stand trial); *see, e.g.*, *United States v. Ferro*, 321 F.3d 756, 760–61 (8th Cir. 2003) (holding that while the district court has the discretion to deem a defendant incompetent, it does not have the discretion to determine whether the defendant will likely attain the capacity to stand trial prior to being committed to the custody of the Attorney General); *United States v. Shawar*, 865 F.2d 856, 860 (7th Cir. 1989) (interpreting Congress's intent in drafting 18 U.S.C. § 4241 and holding, "[t]he plain meaning of this phrase is, and we hold it to be, that once a defendant is found incompetent to stand trial, a district judge has *no discretion* in whether or not to commit him." (emphasis added)). Thus,

because the Court has found that Stanford lacks the mental capacity to effectively assist his attorneys in preparing his defense at this time, the Court must commit Stanford to the custody of the Attorney General.

The statute explains that the Attorney General shall then hospitalize the defendant for treatment in a suitable facility for a given period of time. 18 U.S.C. § 4241(d). A suitable facility, as defined by the statute, is one that can provide care and treatment commensurate with a defendant's characteristics. 18 U.S.C. § 4247(a)(2). This hospitalization will allow for the reduction in Stanford's medications. It will further allow for a more thorough competency assessment via sustained evaluation by staff members who are familiar with the *Dusky* standard. *See Featherston v. Mitchell*, 418 F.2d 582, 585–86 (5th Cir. 1969). This will provide the Court "with a more complete picture of the defendant's mental competency." *United States v. Weston*, 36 F. Supp. 2d 7, 13–14 & n.11 (D.C. Cir. 1999).

Despite clear guidance provided by the governing statutes and relevant case law, Stanford again requests that the Court release him on bond, pursuant to the Bond Reform Act, 18 U.S.C. § 3141 *et seq.*, to "home confinement, with the option of electronic monitoring, and/or hospitalization on an outpatient basis for treatment." Stanford's defense counsel argue that the Court has the authority to commit Stanford to a private, local medical facility, because they perceive ambiguities in the statute.

In support, defense counsel cite several cases commenting on ambiguities in the statutes regarding the medical treatment of incompetent defendants.[7] None of the

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[7]First, Stanford's defense counsel cite a footnote in *United States v. Shawar*, 865 F.2d 856, 860, n.11 (7th Cir. 1989). In *Shawar*, the Seventh Circuit perceived ambiguities in the statute regarding the authority of the Attorney General maintain custody of a defendant deemed "non-dangerous" who may never regain competency after the initial commitment period. *Shawar*, 865 F.2d at 860, n.11. While the court comments on the perceived ambiguity, that issue was not before the court in *Shawar*, it was not resolved by *Shawar*, and it is not before this Court. Further, this does not support Stanford's counsel's position that Stanford should be allowed to admit himself into a private medical facility as a result of the Court's finding he is incompetent.

Second, they cite *United States v. Wheeler*, 744 F. Supp. 633, 637–39 (E.D. Penn. 1990). In *Wheeler*, the district court discussed perceived gaps in 18 U.S.C. § 4246 regarding post-commitment procedures for an incompetent defendant. *Wheeler*, 744 F. Supp. at 637–39. But 18 U.S.C. § 4246 addresses the procedures and possible hospitalization of a person still suffering from mental disease or defect after the four-month commitment period provided for in the statute. This is similar to the issue in *Shawar*, but again, is not at issue here. Stanford has not yet been admitted into a medical facility and is not due for release. Any question about post-commitment treatment is premature, and will be considered at the appropriate time if necessary.

Third, defense counsel rely on *United States v. Sherman*, 722 F. Supp. 504, 505 (N.D. Ill. 1989), for the proposition that 18 U.S.C. § 4241 leaves open the possibility of alternative options for the Attorney General to treat a defendant who may not benefit from such treatment. *Sherman*, 722 F. Supp. at 505. But in *Sherman*, the court is adamant the only option for the court is to commit the defendant to the custody of the Attorney General upon a finding the defendant is incompetent. *Id.* at 505 ("[T]he court believes it has no choice but to follow § 4241(d) to the letter."). Even if the Attorney General has the option of where to send or how to treat a defendant found to be incompetent, it does not follow that the court possesses those same options. Moreover, Stanford's defense counsel contend that Stanford is mentally incompetent to stand trial pursuant to 18 U.S.C. § 4241, and needs to be and will benefit from being hospitalized in a facility outside the Bureau of Prisons. Their position is undermined by this authority, which may leave open the option for the Attorney General to consider hospitalization as treatment.

Fourth, defense counsel cite *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). In *Jackson*, the United States Supreme Court held that a state statute could not compel a defendant to be committed for more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain capacity in the foreseeable future. *Jackson*, 406 U.S. at 738. Again, this is not an issue before the Court.

scenarios discussed in the cases are applicable or relevant to the issue before the Court. Importantly, these cases do not revise or alter the plain language of the applicable statute or the relevant case law, which require the Court to commit Stanford, who has been found to be incompetent to stand trial, to the custody of the Attorney General.

It is not lost on the Court that Stanford's motion to be released to a local mental

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Stanford has not yet been committed and his term of custody with the Attorney General is not about to expire. Regardless, *Jackson* does not support Stanford's motion to be released to a medical facility of his choosing.

Finally, they cite *Vitek v. Jones*, 445 U.S. 480, 495–96 (1980) for the proposition an involuntary transfer of a prisoner to a mental hospital implicates a liberty interest protected by the Fourteenth Amendment's Due Process Clause. In *Vitek*, the Court considered the constitutionality of a state statute permitting prisoners—not an accused who is awaiting trial—to be committed to a mental facility without procedural protections such as notice and a hearing—all of which Stanford had as a pretrial detainee. *Vitek*, 445 U.S. at 495–96. Again, this is not on point. Stanford was afforded all of the due process protections discussed in *Vitek*. Stanford's defense counsel alerted the Court to Stanford's alleged current mental condition; thereafter, the Court held a full evidentiary hearing pursuant to 18 U.S.C. § 4241(b).

None of these cases squarely address, let alone support, Stanford's defense counsel's position that the Court has the discretion to release Stanford to a private medical facility following the Court's finding that Stanford is incompetent to stand trial. To the contrary, all of these cases reiterate the Court's obligation that, upon finding by a preponderance of the evidence that Stanford is incompetent to stand trial, the Court must commit Stanford to the custody of the Attorney General. *See, e.g.*, 18 U.S.C. § 4241(d); *Vitek*, 445 U.S. at 495–96 (discussing the procedural rights triggered when an incarcerated person is deemed incompetent); *Jackson*, 406 U.S. at 747–48 (discussing a state statute and finding that the state may not indefinitely hold a prisoner simply based on an incompetency finding); *Shawar*, 865 F.2d at 863 ("We hold that a judge who finds a defendant incompetent to stand trial under 18 U.S.C. § 4241 must commit him to the custody of the Attorney General"); *Wheeler*, 744 F. Supp. at 637–39 (discussing procedures to be followed post-commitment of an incompetent defendant); *Sherman*, 722 F. Supp. at 505 (citing 18 U.S.C. § 4241, "The statute provides that once the court has found that the defendant is incompetent, 'the court shall commit the defendant to the custody of the Attorney General.' That much is clear.").

facility for treatment may be yet another attempt by Stanford to be released on bond. The Court's finding that Stanford is incompetent, however, does not alter the Court's finding that Stanford is a flight risk and that no combination of conditions of pretrial release can reasonably assure his appearance at trial. *See United States v. Stanford*, 722 F. Supp. 2d 803 (S.D. Tex. 2009); *United States v. Stanford*, 630 F. Supp. 2d 751 (S.D. Tex. 2009). On three occasions, the Court of Appeals for the Fifth Circuit has upheld that determination and rejected Stanford's attempts to obtain bond. *See United States v. Stanford*, No. 10-20466, 2010 WL 3448524 (5th Cir. Aug. 31, 2010) (not selected for publication), *cert. denied*, ---S. Ct.---, 2011 WL 134792 (Jan. 18, 2011); *United States v. Stanford*, 367 Fed. App'x 507 (5th Cir. 2010); *United States v. Stanford*, 341 Fed. App'x 979 (5th Cir. 2009). Neither the case law cited nor the arguments made by Stanford's defense counsel convinces or compels the Court to change its finding.

Accordingly, the Court hereby

ORDERS that the Memorandum of Law in Support of Motion for Relief and Medical Treatment (Document No. 397) is GRANTED to the extent the Court finds that Stanford is incompetent to stand trial at this time. The Court further

ORDERS that the Memorandum of Law in Support of Motion for Relief and Medical Treatment (Document No. 397) is DENIED to the extent defense counsel

seek the Court to release Stanford on bond, so he can undergo treatment at a private medical facility in Houston, Texas, or for any other reasons. The Court further

ORDERS that Stanford be committed to the custody of the Attorney General and undergo medical treatment for his current impaired mental capacity. The Court further

RECOMMENDS that the Attorney General send Stanford to a medical facility within the Bureau of Prisons, such as the Federal Medical Center in Butner, North Carolina or to another suitable facility as defined by 18 U.S.C. § 4247(a)(2), that has the capability to (i) psychiatrically and psychologically treat Stanford and ensure that Stanford's medications do not cause mental impairment, (ii) conduct subsequent psychiatric and neurological testing, and then (iii) conduct a competency examination.

The Court further

ADMONISHES the attorneys representing the Government and Stanford to diligently prepare this case to proceed to trial notwithstanding Stanford's absence.

All other relief not specifically granted herein is DENIED.

SIGNED at Houston, Texas, on this 26 day of January, 2011.

DAVID HITTNER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal Action No. H-09-342
	§	
ROBERT ALLEN STANFORD	§	

ORDER OF COMPETENCY

On January 26, 2011, the Court issued an order finding Defendant Robert Allen Stanford incompetent to stand trial in the above styled case. The Court further ordered, pursuant to 18 U.S.C. § 4241(d), that Stanford be committed to the custody of the Attorney General and undergo medical treatment for his then-impaired mental capacity. On February 18, 2011, Stanford was admitted to the Bureau of Prisons Federal Medical Center in Butner, North Carolina ("FMC-Butner") for psychiatric evaluation. Following an eight-month evaluation period, on November 4, 2011, the FMC-Butner medical staff submitted a report to the Court summarizing their findings and concluding that Stanford is competent to stand trial.

On December 20, 2011, the Court commenced a three-day hearing on Stanford's current mental competency to stand trial. Based upon the exhibits and testimony admitted at the hearing, the Court determines, by a preponderance of the evidence, that Stanford has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense.

Accordingly, the Court hereby

ORDERS that Defendant Robert Allen Stanford is now competent to stand trial pursuant to 18 U.S.C. § 4241. A more thorough order outlining the Court's detailed finding will be forthcoming. The Court further

ORDERS that Defendant Robert Allen Stanford shall be officially discharged from the Federal Medical Center in Butner, North Carolina, and he shall remain in the custody of the Federal Bureau of Prisons and detained in the Federal Detention Center in Houston, Texas, pending trial.

SIGNED at Houston, Texas, on this 22 day of December, 2011.

DAVID HITTNER
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
Plaintiff	§	CRIMINAL DOCKET H-09-342-1
	§	**HONORABLE DAVID HITTNER**
vs	§	
	§	
ROBERT ALLEN STANFORD	§	
Defendant.	§	

DEFENDANT'S MOTION TO DISMISS THE INDICTMENT BASED ON VIOLATIONS TO THE FIFTH AND SIXTH AMMENDMENTS OF THE CONSTITUTION

TO THE HONORABLE JUDGE HITTNER:

Robert Allen Stanford, the Accused in this matter, respectfully files this motion to dismiss and would show the Court as follows:

I. RELEVANT FACTS

1. On February 17, 2009 the Securities and Exchange Commission (SEC) initiated civil proceedings against the Stanford companies, the Accused, and other individuals. Offices in 33 cities in the United States were instantly seized.

2. The Accused was arrested on June 19, 2009. At no time did he try conceal himself or avoid apprehension. Authorities immediately placed the Accused in solitary confinement upon his arrival at the Joe Corley Detention Facility (Corley) on June 23, 2009.

3. On June 24, 2009, only a day after his arrival at Corley, the Accused began coughing up blood requiring that he be taken to the emergency center. The following day, June 25, 2009, he was taken to court for his detention hearing, and arraignment. Pretrial services recommended that the Accused be released on bond. At the conclusion of a lengthy evidentiary hearing, United States Magistrate Frances H. Stacey agreed, and ordered that the Accused be released on a $500,000 bond with conditions that he remain in Houston, wear a GPS monitor, and obtain authorization prior to visiting his attorneys or physicians. The Government filed an Emergency Appeal with this Court requesting a rehearing on the issue of bail. (Doc. 31). On June 29, 2009, this Court reversed Judge Stacy's Order granting bond and ordered the Accused Detained. (Doc. 52).

4. On August 27, 2009, while at custody, the Accused was vomiting, experiencing chest pain, and having difficulty breathing. He was handcuffed and shackled and taken to the Conroe Regional Medical Center (CRMC). Medical testing determined that the Accused suffered a irregular heartbeat that required surgery. The CRMC nurse's notes state that the U.S. Marshals Service would not allow the Accused's family visitation prior to his cardiac procedure nor would the U.S. Marshals

allow him to contact his family or lawyer. (Scarano December 2011 Report p. 24).

5. Following these tests, the Accused was released from the CRMC and returned to Corley where he was placed in solitary confinement.

6. The Accused was removed from solitary confinement and was taken to CMRC for surgery. He was transported to the hospital and into the operating room in shackles and handcuffs and awoke from surgery in his shackles. He was then transferred back to Corley where he was detained.

7. On September 24, 2009, the Accused was assaulted by an inmate at Corley. The Accused was punched and kicked in the face and head so severely that his nose, both cheekbones, and the bones surrounding his right eye were broken.[1] (Scarano December 2011 Report p. 9, 105).[2] The Accused lost consciousness during the assault. A video of the Accused following the assault shows that the beating left him so disoriented that he could not correctly answer the question: "What is your name?" (Scarano December 2011 Report p. 9, 27, 105). The Accused has lost all feeling in his right cheek, the right orbital area, the right side of the nose, and the

[1] The inmate who beat the Accused was not charged with the offense of assault.
[2] Dr. Scarano prepared a report in December 2011 in support of his expert medical opinion that the Accused was not competent to stand trial.

right side of the upper lip. As a result, he can no longer read with his right eye.

8. After the attack, the Accused was taken to the hospital for emergency treatment and upon his release, was returned to Corley where he was held in isolation. He was then transferred to the Federal Detention Center, Houston, (FDC) where he was placed in solitary confinement within the Special Housing Unit (SHU) in a 6 by 7 foot cell where he was held in isolation for 23 days. While in isolation, guards slipped food to him through a transfer slot in the metal door. (Scarano December 2011 Report p. 9). The Accused was taken from his small cell in solitary confinement to the hospital, where he underwent surgery requiring general anesthesia to repair the numerous broken bones in his face inflicted during the assault. (Scarano December 2011 Report p. 105). The Accused was then transferred back to the FDC where he was returned to solitary confinement within the SHU while he recovered from the assault and surgery. (Scarano December 2011 Report p. 105). He was not given antibiotics, painkillers, or medical attention for 14 days. Left alone, he was forced to remove the bloody gauze that had been packed into his nasal cavity during the surgery so that he could breathe. It was during this period following the reconstructive surgery in solitary confinement that

the Accused began to show signs of mental deterioration. (Scarano December 2011 Report p. 9-10).

9. According to prior counsel Michael Sokolow, the assault coupled with the placement in solitary confinement during his recovery from surgery caused the Accused's mental condition to sharply decline. (Scarano December 2011 Report, p. 66). Within two weeks of the assault, Sokolow contacted Dr. Scarano with concerns over the Accused's mental health because the Accused's mental state made it impossible for him to meaningfully participate in the preparation for trial of this document intensive case. (Scarano December 2011 Report p. 66).

10. Following the assault, the Accused experienced depression and severe anxiety. He was prescribed an antidepressant and medication for anxiety by doctors at the FDC. The doctors prescribed a benzodiazepine (Klonopin), along with several other drugs to treat the Accused's condition. This was ill advised in that the records revealed that approximately four months prior to prescribing the benzodiazepine the Accused had been diagnosed with a liver condition. The Accused had never taken any medication for either depression or anxiety before the assault at Joe Corley and his transfer to FDC. (January 2011 Competency Hearing Tr., p. 114).

11. This Court held a competency hearing on January 6, 2011. Dr. Rosenblatt, a psychiatrist initially contacted by the Government as an expert witness to support the Government's position that the Accused was competent, testified for the Accused at the January 2011 competency hearing. He stated that the daily regimen of three milligrams of Klonopin the FDC medical staff had prescribed to him was an unreasonably high dose of a benzodiazepine and that the Accused had become addicted to the medication. (January 2011 Competency Hearing Tr., p. 120). Dr. Rosenblatt concluded that this excessive dose of Klonopin caused the Accused to suffer from delirium: an organic brain syndrome resulting in disorientation, confusion, and memory deficit. (January 2011 Competency Hearing Tr. p. 125).

12. At the January 2011 competency hearing, all three testifying medical experts concurred that the Accused suffered a traumatic brain injury during the September 2009 assault at Corley. The experts also all agreed that the Accused suffered permanent frontal lobe damage as a result of the beating. The experts shared the opinion that it was impossible to "tease out" how much of the Accused's mental impairment was due to brain injury without neurological testing. However, because the Accused was on high dosages of Klonopin, Zoloft, and Mirtazapine, the experts could

not determine if he had suffered permanent brain damage until he was withdrawn from these medications and neurological exams could be performed.

13. On January 26, 2011, this Court determined that the Accused was incompetent to stand trial under 18 U.S.C. § 4241(d). (Doc. No. 402). He was transferred to the Federal Medical Center, Butner (Butner). While at Butner, for more than eight months, the Accused was slowly weaned from the Klonopin, which resulted in withdrawal symptoms including nausea, vomiting, and severe insomnia.

14. Medical records from Butner indicate that in late November 2011, the Accused still suffered from "episodic intense headaches, delayed speech and slow cognitive processing, as well as depressive signs." (Scarano December 2011 Report p. 56). Nevertheless, on November 2, 2011, Dr. Cochrane reported to this Court that the Accused had been restored to competency.

15. Following his return to the FDC in Houston, the Accused was examined by Dr. Scarano M.D., a forensic psychiatrist; Larry Pollock, Ph.D., a neuropsychologist; Dr. Ralph Lilly, M.D., a neurologist; and Dr. David Axelrad, M.D., neuropychiatrist. Dr. Pollock conducted a neuropsychological evaluation of the Accused at the FDC on December 8,

2011. The evaluation revealed significant neuropsychological impairments to the Accused's auditory/language functioning, motor functioning, visual functioning, verbal memory, and executive functioning that were not present before the Accused's incarceration. (Scarano December 2011 Report p. 72). These deficits impair the Accused's ability to communicate effectively, read and write, perform physical tasks requiring visual motor integration, learn new material, and keep track of conversations. They slow his thought processes, cause him to have rigid thought patterns, and lead to him becoming easily confused by complex material. (Scarano December 2011 Report p. 73). Dr. Pollock concluded that the Accused's cognitive functioning is significantly lower than before his incarceration. (Scarano December 2011 Report p. 73). Doctors Lilly and Axelrad both reviewed all of the medical records relevant to the Accused's condition and conducted appropriate examinations of the Accused to form a medical opinion as to his competency. Both doctors were emphatic in their opinions that the Accused is incompetent. Doctor Axelrad testified that he is an experienced expert regarding Government run medical facilities. The protocols used at Butner to determine the Accused's competency were flawed in that the medical doctor at the

facility, Dr. Bryon Herbel would have been the appropriate person to evaluate the Accused.

16. In his report, Dr. Scarano noted that medical records show that since the Accused was assaulted, the he has had ringing in his ears that has led to severe insomnia and that his ability to read and focus is limited because he develops severe headaches above his right eye requiring him to take frequent breaks. Dr. Scarano also noted that the Accused's speech is pressured at times and he demonstrates decreased psychomotor activity. The Accused has developed a tremor in his hands. Dr. Scarano also found that the Accused exhibits a slowed thought process as well as paranoid thoughts which at times are pathological.

17. Dr. Scarano has diagnosed the Accused as suffering from dementia due to head trauma, post-concussional disorder, post-traumatic stress disorder (PTSD), and traumatic brain injury causing physical and cognitive symptoms. (Scarano December 2011 Report, p. 103). Dr. Scarano concluded that the severe beating at Corley and subsequent placement in solitary confinement at FDC, as the Accused was recovering from reconstructive surgery, caused damage to his cognitive abilities that met the criteria of post-concussional disorder. (Scarano December 2011 Report, p. 106). On such a large dose of Klonopin to combat the

Accused's anxiety after the attack compounded the underlying brain trauma he had previously suffered. (Scarano, *Id*.).[3] Dr. Scarano concluded that the Accused's "present physical, cognitive, and memory deficits" were caused by the traumatic brain injury resulting from the assault at Corley in combination with the overdose of Klonopin prescribed by FDC doctors after the beating. (Scarano, *Id*.).

II. THE CONDITIONS OF THE ACCUSED'S PRETRIAL CONFINEMENT VIOLATE DUE PROCESS

18. Conditions of pretrial detention are evaluated under Due process rather than the Eighth Amendment. *Bell v. Wolfish*, 411 U.S. 520, n. 16 (1979). Due process prohibits punishment of pretrial detainees. *Bell v. Wolfish*, 411 U.S. n. 16, citing *Ingraham v. Wright*, 430 U.S. 651, 671-672, n. 40 (1977). The test applied to determine whether a governmental act violates Due process as punitive includes:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote traditional aims of punishment – retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears

[3] As argued *infra*, Government negligence in allowing the Accused to be attacked and then prescribing Klonopin has caused the Accused to lose significant mental capacity and has affected his demeanor and appearance in violation of his Fifth and Sixth Amendment rights.

> excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions.

Bell v. Wolfish, 411 U.S. 520, 537-538 (1979) quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1969).

19. Where there is no "expressed intent to punish on the part of detention facility officials, that determination generally will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]." *Bell v. Wolfish*, 411 U.S. at 537-538 quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1960). "[I]f a restriction or condition is not reasonably related to a legitimate goal – if it is arbitrary or purposeless – a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees." *Bell v. Wolfish*, 411 U.S. at 539 quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. at 567-568.

> Retribution and deterrence are not legitimate nonpunitive governmental objectives. *Kennedy v. Mendoza-Martinez, supra,* 372 U.S., at 168, 83 S.Ct., at 567. Conversely, loading a detainee with chains and shackles and throwing him in a dungeon may ensure his presence at trial and preserve the security of the institution. But it would be difficult to conceive of a situation where conditions so harsh, employed to achieve objectives that could be accomplished in so many alternative and less harsh

> methods, would not support a conclusion that the purpose for which they were imposed was to punish.

Bell v. Wolfish, 441 U.S. 520, n. 20 (1979).

20. Here, the apparent intent to punish the Accused by placing him in solitary confinement following the attack and surgery is borne out by the context within which the Government conduct was committed. It is axiomatic that the charges against the Accused are not evidence and that he is presumed innocent. *Coffin v. United States*, 156 U.S. 432, 453 (1895) (The presumption of innocence "lies at the foundation of the administration of our criminal law."). Yet, officials at Corley and the FDC consistently treated the Accused as if he was the "worst of the worst" despite the fact that he was detained on nonviolent white-collar charges. For example, when transporting the Accused to the hospital after assault, he was shackled and chained even though he was beaten unconscious, could not remember his own name, and was repeatedly vomiting blood. While at CMRC for heart surgery, the Accused was taken *into the operating room* chained and shackled and awoke upon completion of the surgery in shackles. The nurse's notes from CRMC note that the U.S. Marshal refused to allow the Accused to even place a phone call to his family or lawyers before he underwent a heart proceedure. Prison officials' severe treatment of the Accused at the FDC is demonstrated with repeated interference with the

Accused's attempt to prepare his defense. On June 27, 2010, the Accused found that the legal documents that he had organized over the period of months, had been removed from the drawer where they were stored and scattered across the floor of the cell. Two weeks later, on July 16, 2010, FDC Lieutenant Beverly dumped all of the Accused's legal documents that the Accused had painstakingly organized to prepare his defense into large trash bags. These actions were arbitrary and frustrated the Accused's efforts to defend himself against the charges.

21. The placement of the Accused in solitary confinement without medical treatment or medication, following the attack and subsequent reconstructive surgery, was with the apparent intent to punish. No satisfactory reason can be given as to why the Accused was not allowed to remain in the FDC's infirmary during his recovery. Solitary confinement is severe punishment when imposed upon an inmate convicted of the most violent felony. It is unconscionable when imposed upon an accused who is presumed innocent of nonviolent white-collar charges and who has just been beaten so badly that he requires reconstructive surgery to his face under general anesthesia. Abandoning the Accused in isolation as he was recovering from a serious assault and major surgery was punitive and therefore prohibited under due process.

22. Furthermore, Dr. Scarano found that placing the Accused in the SHU after the assault and surgery exacerbated the damage already done to the Accused's mental capacity. This Due process violation therefore contributed to the Accused's significant loss of mental capacity and impinges on his Fifth and Sixth Amendment rights to the Government's advantage.

III. THE GOVERNMENT REDUCED THE ACCUSED'S MENTAL CAPACITY THROUGH ITS NEGLIGENCE AND BENEFITS FROM THE ACCUSED'S INABILITY TO FULLY EXERCISE HIS FIFTH AND SIXTH AMENDMENTS RIGHTS

23. The Government's negligence has resulted in the Accused suffering from diminished mental capacity and thereby has interfered with the Accused's ability to effectively exercise his rights under the Fifth and Sixth Amendments to assist counsel in the preparation of his defense, cross-examine witnesses, testify on his own behalf, and the presumption of innocence.

24. A defendant's due process rights are violated when the government does not preserve materially exculpatory evidence. *California v. Trombetta*, 467 U.S. 479, 488 (1984); *United States v. Wright*, 260 F.3d 568, 570 (6th Cir. 2001); *Hofman v. Thaler*, 2010 WL 3938375, 4-5 (N.D. Tex. 2010). The destruction of materially favorable evidence violates the defendant's due process rights, regardless of whether the government acted in bad faith.

Trombetta, 467 U.S. at 488; *Wright*, 260 F.3d at 571, *Hofman v. Thaler*, 2010 WL 3938375, at 5. To be found constitutionally material, the evidence "must possess an exculpatory value that was apparent before [it] was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 488-489; *United States v. Moore*, 452 F.3d 382, 387 (5th Cir. 2006); *Wright*, 260 F.3d 570-571.

25. The burden of establishing the materiality of the destroyed evidence is not an overwhelming task:

> First, materiality does not require the defendant to demonstrate by a preponderance of the evidence that omitted evidence would have resulted in acquittal. Second, he need not weigh the withheld evidence against the disclosed evidence to show he would have been acquitted by the resulting totality. Third, if evidence is found material, there is no need to conduct a harmless error analysis. Fourth, the withheld evidence should be considered as a whole, not item-by-item. *Kyles v. Whitley,* 514 U.S. 419, 434-37, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). The sum of these four guideposts means that to show a due process violation when the state withholds evidence, a defendant need not prove that his trial necessarily would have had a different outcome; a lack of faith in the result is sufficient.

United States v. Moore, 452 F.3d 382, n. 22 (5th Cir. 2006) quoting *DiLosa v. Cain*, 279 F.3d 259, 263 (5th Cir. 2002).

26. The Accused's appearance and demeanor are important at his trial. The jury is the final arbiter of the weight and credibility of the evidence and witnesses. *United States v. Goff*, 847 F.2d 149, 161 (5th Cir. 1988) (citations omitted); *see also United States v. Restrepo*, 994 F.2d 173, 182 (5th Cir. 1993). Thus, there is no substitute for the Accused's ability to communicate with the jury through his testimony on direct and cross-examination. There is also no substitute under the Sixth Amendment to the defendant's ability to review and evaluate the evidence in this document intensive case as well as communicate with his counsel to assist in preparing his defense.

27. The Accused's mental capacity was altered due to government negligence. The government's failure to protect the Accused from the assault resulted in the Accused suffering organic brain damage. This was compounded by the FDC doctors' further negligence in prescribing Klonopin to the Accused. The combination of the assault and the toxic levels of Klonopin have rendered the Accused less capable of reviewing the evidence against him and communicating with his counsel in an effort to prepare his defense.

28. The diminished capacity resulting from the assault and levels of medication will also have a negative impact on the Accused's rights at trial. The government's negligence has altered the Accused's demeanor and physical appearance. The Accused now has a tremor in his hands and exhibits

slowed speech and motor functions. His ability to communicate to Counsel and the jury has also been affected. His thought processes have been slowed and he becomes easily confused, placing in jeopardy the Accused's right to testify effectively on his own behalf. The Accused's confusion and inability to maintain focus may very well be perceived by jurors as evidence of evasion or deceit. The tremor in his hands could be interpreted by the jury as evidence of nervousness based on feelings of guilt.

29. The focus of this case is heavily dependent on forensic accounting involving millions of documents, and events spanning more than a decade. The Accused must be capable of assisting defense counsel and presenting himself and his case to the best of his ability. This is fundamental and should have been apparent to the government and its agents. Yet the government's negligence allowed the Accused to be so severely beaten that he has suffered demonstrable brain damage.

30. The Supreme Court has recognized that the symptoms caused by the Accused's diminished capacity violate his rights as outlined in the Fifth and Sixth Amendment. In *Riggins v. Nevada*, 504 U.S. 127 (1992), the Supreme Court noted that forcefully medicating the defendant may have violated his trial rights under due process and the Sixth Amendment:

> At the hearing to consider terminating medication, Dr. O'Gorman suggested that the dosage administered to

> Riggins was within the toxic range, *id.,* at 483, and could make him "uptight," *id.,* at 484. Dr. Master testified that a patient taking 800 milligrams of Mellaril each day might suffer from drowsiness or confusion. *Id.,* at 416. Cf. Brief for American Psychiatric Association as *Amicus Curiae* 10-11 ("[I]n extreme cases, the sedation-like effect [of antipsychotic medication] may be severe enough (akinesia) to affect thought processes"). *It is clearly possible that such side effects had an impact upon not just Riggins' outward appearance, but also the content of his testimony on direct or cross examination, his ability to follow the proceedings, or the substance of his communication with counsel.*

Riggins, 504 U.S. at 137 (emphasis added).

31. The potential side effects of the medication at issue in *Riggins* included: restlessness, tremors, a diminished range of facial expressions, slowed movement and speech, and sedation effects that "in severe cases may affect thought processes." *Riggins*, 142-143 (Kennedy, J., concurring). It was the impact of these possible side effects on Riggins' appearance, the substance of his communication with counsel, his ability to follow the proceedings, and the content of his testimony on direct and cross-examination that raised the possibility of a constitutional violation in *Riggins*.

32. In his concurring opinion, Justice Kennedy recognized two ways that the medication's side effects could prejudice the defendant's trial rights: (1) by altering his demeanor and thereby his "reactions and presentation in the

courtroom" and (2) by causing the defendant to be unable to assist counsel in his defense. *Riggins*, 504 U.S. 142 (Kennedy, J., concurring).

> At all stages of the proceedings, the defendant's behavior, manner, facial expressions, and emotional responses, or their absence, combine to make an overall impression on the trier of fact, an impression that can have a powerful influence on the outcome of the trial. If the defendant takes the stand, […], his demeanor can have a great bearing on his credibility, persuasiveness, and on the degree to which he evokes sympathy. The defendant's demeanor may also be relevant to his confrontation rights. See *Coy v. Iowa,* 487 U.S. 1012, 1016-1020, 108 S.Ct. 2798, 2800-2802, 101 L.Ed.2d 857 (1988) (emphasizing the importance of the face-to-face encounter between the accused and the accuser).
> The side effects of antipsychotic drugs may alter demeanor in a way that will prejudice all facets of the defense. Serious due process concerns are implicated when the State manipulates the evidence in this way.

Riggins, at 142. (Kennedy, J., concurring).

33. Justice Kennedy also noted the impact of the medication's possible negative side effects on the defendant's Sixth Amendment right to the assistance of counsel.

> We have held that a defendant's right to the effective assistance of counsel is impaired when he cannot cooperate in an active manner with his lawyer. *Massiah v. United States,* 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964); *Geders v. United States,* 425 U.S. 80, 96 S.Ct. 1330, 47 L.Ed.2d 592 (1976) (trial court order directing defendant not to consult with his lawyer during an overnight recess held to deprive him of the effective assistance of counsel). The defendant must be able to

> provide needed information to his lawyer and to participate in the making of decisions on his own behalf. The side effects of antipsychotic drugs can hamper the attorney-client relation, preventing effective communication and rendering the defendant less able or willing to take part in his defense. The State interferes with this relation when it administers a drug to dull cognition.

Riggins, at 144 (Kennedy, J., concurring).

34. The impairment of the Accused's ability to assist in preparing his defense due to his diminished capacity resulting from Government negligence has been compounded by the conditions of his confinement at FDC. The discovery in this case is voluminous. The Government has chosen to upload discovery onto iCONNECT, an internet based litigation support platform. But, the Accused is not allowed access to the internet under FDC regulations and therefore cannot access the discovery on iCONNECT. Discovery has therefore had to be delivered to the Accused for his review with Counsel in a piecemeal fashion on CD-ROM. Further, this process has been hampered by the Accused's commitment to Butner following this Court's finding that he was not competent to proceed to trial. In addition to the limited amount of materials which can be provided to the Accused and the limitation on the hours that Counsel can provided the Accused with these materials, the

Accused's diminished capacity to learn new materials and inability to focus have further impeded the Accused's ability to familiarize himself with the available discovery and assist Counsel in preparing his defense.

PRAYER

Due to the repeated outrageous government conduct outlined above, which violates due process, as well as Fifth and Sixth Amendment rights of the Accused, Counsel for the Accused prays this Court dismiss the indictment against him.

Respectfully Submitted,
SCARDINO & FAZEL

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CERTIFICATE OF SERVICE

Ali R. Fazel certifies that a true and correct copy of this document has been served on January 6, 2012 via ECF filing to:

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United States Attorney's Office
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/s/ Ali R. Fazel
Ali R. Fazel

CERTIFICATE OF CONFERENCE

Counsel for the Government could not be reached, but Counsel for the Accused assumes he is opposed to this motion.

/s/ Ali R. Fazel
Ali R. Fazel

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, *Plaintiff*	§ §	CRIMINAL DOCKET H-09-342-1 **HONORABLE DAVID HITTNER**
	§	
vs	§	
	§	
ROBERT ALLEN STANFORD, *Defendant*	§ §	

ORDER

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss the Indictment Based on Violations of the Fifth and Sixth Amendments of the Constitution is:

GRANTED:

Signed this ____ day of _____, 2012.

_____
David Hittner
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal Action No. H-09-342
	§	
ROBERT ALLEN STANFORD	§	

ORDER

Pending before the Court is Defendant's Motion to Dismiss the Indictment Based on Violations to the Fifth and Sixth Amendments of the Constitution (Document No. 588). Having considered the motion, submissions, and applicable law, the Court determines the motion should be denied. Accordingly, the Court hereby

ORDERS that Defendant's Motion to Dismiss the Indictment Based on Violations to the Fifth and Sixth Amendments of the Constitution (Document No. 588) is DENIED.

SIGNED at Houston, Texas, on this 13 day of January, 2012.

DAVID HITTNER
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	**CR. NO. 4:09-342-01**
v.	§	
	§	
ROBERT ALLEN STANFORD	§	

RESPONSE OF THE UNITED STATES TO
STANFORD'S MOTION TO DISMISS THE INDICTMENT

Stanford seeks dismissal of the Indictment by arguing that his Due Process rights have been violated by the conditions of his confinement, and that his purported mental deficiencies render him incapable of exercising his Fifth and Sixth Amendment rights. *See* Doc. 588. Stanford is wrong on both the law and the facts. As an initial matter, his Due Process claim is procedurally improper: the only remedy for his allegations regarding the conditions of his confinement is a civil action, not dismissal of the Indictment. Disregarding this Court's competency finding, Stanford's other argument for dismissal focuses once again on claims concerning his purported mental deficiencies. As this Court determined, the medical record has clearly established that Stanford is not only "competent to stand trial, but also that he was **malingering**." *See* Doc. 577, at 2 (emphasis in original). Accordingly, the United States respectfully submits that the motion to dismiss should be swiftly rejected.

A. STANFORD'S CONDITIONS OF CONFINEMENT ARE NOT A BASIS FOR DISMISSAL

Stanford complains that his post-surgical placement in solitary confinement, purportedly "without medical treatment or medication," was punitive and therefore a Due Process violation.[1] *See* Doc. 588, ¶¶ 21-22. A criminal case, however, is not the proper forum for complaints concerning conditions of confinement, and the dismissal of the Indictment is therefore a legally unavailable remedy.

Complaints about conditions of confinement do not provide a basis for dismissing a criminal indictment. A civil rights action is the appropriate means of raising a constitutional challenge to the conditions of confinement, as illustrated by Stanford's citation exclusively of civil cases and the absence of any authority supporting dismissal of an indictment as a remedy for any deficient prison conditions. The caselaw is clear on this issue. *See Preiser v. Rodriguez*, 411 U.S. 475, 498-99 (1973); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) ("A civil rights action, in contrast [to a habeas challenge to the legality or duration of

[1]Stanford acknowledges that the Eighth Amendment Due Process clause does not apply to pretrial conditions of confinement (Doc. 588, ¶18), but mistakenly relies on cases invoking the Due Process Clause in the Fourteenth Amendment. The prohibitions prescribed in the Fourteenth Amendment, however, are directed only to the states and are inapplicable in a federal prosecution. *See* U.S. Const. amend. XIV ("No **State** shall ... abridge the privileges or immunities of citizens of the United States; nor shall any **State** deprive any person ... due process of law[,] nor deny an person ... the equal protection of the laws." (emphasis added)). In any event, regardless of how Stanford frames his complaints concerning confinement, they do not provide a basis to dismiss the Indictment for the reasons discussed above.

confinement], is the proper method of challenging the conditions of ... confinement."); *United States v. Bennett*, 2011 WL 285221, at *4 (D. Or. January 26, 2011) (a defendant may pursue affirmative civil claims for conditions of confinement but they do not provide a basis for dismissing an indictment). Indeed, Stanford, during the time he was deemed to be incompetent, had a lawyer pursuing such civil claims against the Bureau of Prisons.

In short, Stanford's complaints regarding pretrial conditions of confinement are irrelevant to the pending criminal charges, and instead constitute separate, independent claims that government officials have deprived him of constitutional rights during his pretrial detention. Although the United States views Stanford's allegations as baseless in light of the Bureau of Prisons' repeated efforts to accommodate and treat him,[2] those claims cannot be raised in this case, much less redressed by dismissing the Indictment.

[2]Stanford's complaints regarding his conditions of confinement mainly focus on his placement in the SHU following surgery. As reflected in 28 C.F.R. §§ 541.23© & 541.27, inmates may be placed in the SHU for protective reasons following assault by another inmate. Stanford's altercation with the other inmate, coupled with Stanford's subsequent need for post-surgical recovery, provided ample grounds to segregate Stanford from the general population for his own safety and recovery. Moreover, the Fifth Circuit has also held that absent extraordinary circumstances, administrative segregation as such will never be a ground for a constitutional claim because it "simply does not constitute a deprivation of a constitutionally cognizable liberty interest." *Pichardo v. Kinker*, 73 F.3d 612-613 (5th Cir. 1996).

B. STANFORD'S CLAIMS CONCERNING HIS COMPETENCY ALSO FAIL

The second prong of Stanford's attack on the Indictment is similarly unavailing. Myopically focusing on the events surrounding his medical treatment prior to the first competency hearing in January 2011, Stanford contends that his diminished mental capacity will negatively impact his Fifth and Sixth Amendment rights in various ways. *See* Doc. 588, ¶¶ 23-34. Remarkably, Stanford ignores altogether the December 2011 competency hearing where this Court found him competent to stand trial, and the overwhelming record establishing that his claim of continued deficiencies evidence malingering.

This motion is simply Stanford's latest attempt to revive his competency claims. His continued assertions regarding his purportedly limited mental capacity are directly contradicted by the evidence adduced at the competency hearing. As Dr. Pennuto summarized in her supplemental report, "Mr. Stanford's performance on the administered effort/symptom validity measures at FMC Butner clearly indicates that he is exaggerating any cognitive deficits that he may have." *See Neuropsychological Evaluation* dated December 16, 2011 by Dr. Tracy Pennuto, at 4 (Doc. 549). Dr. Pennuto explained that the medical record revealed that Stanford "was either feigning cognitive impairment, or exaggerating any cognitive deficits that he may have. Of note, such convincing deception necessitates intact cognitive

functioning."[3] *Id.*

Stanford's heavy reliance on *Riggins v. Nevada*, 504 U.S. 127 (1992) is likewise mistaken. At the district court's direction, Riggins was forcibly medicated with antipsychotic drugs with sedative effects, without any finding regarding the need for the medication, or alternative treatments. *Riggins* consequently held that the record below contained insufficient findings that the medication was necessary to accomplish an essential state policy. Contrary to Stanford's argument, *Riggins* did not preclude medical treatment that might prejudice a trial defendant's rights, but instead instructed courts to make appropriate findings that any potential prejudice, even if a "substantial probability," was "justified." *See id.*, 135-138. In any event, *Riggins* is simply inapposite: Stanford has been successfully weaned off medication (which he was voluntarily taking and, in fact, demanding) to restore his competency, and this Court has observed him at length on multiple occasions and knows that he engaged and articulate. Moreover, in contrast to the *Riggins* trial court, this Court has engaged in an extensive fact-finding hearing to determine competency, and there is an ample medical record supporting that determination.

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[3]Stanford's persistence in protesting his supposed incompetence, which this Court has assessed and rejected following a meticulous hearing, further supports the Government's *in limine* motion regarding this subject. (Doc. 585, 4-6.) Absent preclusion, Stanford will continue to resurrect these claims improperly before the jury.

Finally, Stanford's complaints about his inability to prepare for trial due to prison conditions (Doc. 588, ¶ 34) are also flatly belied by the record. The FDC has made numerous accommodations to assist Stanford and his legal team. *See* Doc. 245, at 19-24, Exhibits 6-9. For example, as the Court may recall from the prior bail litigation, in every instance in which Stanford's legal team has submitted a timely request (24-hour advance notice) for extended visiting hours, the Bureau of Prisons has allowed it. *Id.*, Ex. 8. As this Court recognized in denying Stanford's motion for a continuance, Stanford currently has four lawyers working full-time on his case, and the United States' discovery has been broad and liberal, including a searchable database. *See* Doc. 565. Moreover, the United States' discovery has been supplemented by independent vendors retained by the defense at considerable expense. Among other things, those vendors have designed a new searchable database for the discovery in this case specially tailored for Stanford's personal use in prison. In short, Stanford has enjoyed a high level of representation, ranging from extremely able and numerous counsel to litigation resources, that few, if any, defendants receive.

CONCLUSION

For the reasons above, Stanford's motion to dismiss for alleged deficiencies in his conditions of confinement cannot be litigated in the criminal case, much less result in dismissal of the Indictment. Moreover, as this Court has already found, Stanford is competent to stand trial and therefore exercise his Fifth and Sixth Amendment rights. Accordingly, his motion to dismiss the Indictment should be denied.

Respectfully submitted,

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United States Attorney

\s\ William Stellmach
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Trial Attorney, Fraud Section
Department of Justice

CERTIFICATE OF SERVICE

I certify this response was served to counsel for defendant Stanford via ECF on January 12, 2012.

\s\ Gregg Costa
Gregg Costa
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	**CR. NO. 4:09-342-01**
v.	§	
	§	
ROBERT ALLEN STANFORD	§	

ORDER

Pending before this Court is the opposed Motion to Dismiss the Indictment by Defendant Robert Allen Stanford (Document No. 588). Having considered the motion, the arguments of counsel and the applicable law, the Court determines that the motion should be denied. Accordingly, the Court hereby

ORDERS that Defendant Robert Allen Stanford's Motion to Dismiss the Indictment is DENIED.

SIGNED at Houston, Texas, on this ____ day of January, 2012.

_____
DAVID HITTNER
United States District Judge